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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/615,317	07/08/2003	Joseph S. Stam	AUTO 218	9360
28167	7590	05/12/2009		
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EXAMINER				
ELEY, JESSICA L				
ART UNIT		PAPER NUMBER		
2884				
MAIL DATE		DELIVERY MODE		
05/12/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/615,317

**Applicant(s)**

STAM ET AL.

**Examiner**

JESSICA L. ELEY

**Art Unit**

2884

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 26, 27, 32-38 and 41-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26, 27, 32-38 and 41-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 26, 27, 32-38, and 41-46 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Regarding claim 26, the Specification fails to enable one of ordinary skill in the art at the time the invention was made to create a vehicular system “capable of distinguishing vehicular light source from non-vehicular light sources.” The first issue is one of claim construction, that is, what is the scope intended by the term “non-vehicular light sources.” While it was argued in the hearing that the recitation of non-vehicular light sources refers to light reflected off of a sign in accordance with the Specification (¶0055) an exact definition of the phrase does not appear and it might be reasonable to consider such reflections generated by the vehicle itself as vehicular in origin. More specifically, the specification fails to enable one of ordinary skill in the art at the time the invention was made to distinguish between a vehicular light source (e.g., an oncoming vehicle’s high-beams) and a light source which is plainly understood to be non-vehicular (e.g., the light from a street lamp). While measuring a brightness ratio can distinguish between an intense light source, such as a headlight, and a reflected light source, such

as a street sign, the measured ratio does not enable one of ordinary skill to distinguish between a bright light source that is vehicular in origin and a source which is non-vehicular in origin but of equal brightness.

Furthermore, the functional claim language of “being capable of distinguishing vehicular light source from non-vehicular light sources,” is not preceded by “means for” to describe the limitation, thus examiner presumes that applicant did not intend to invoke an interpretation under § 112, sixth paragraph. As such, “being capable of distinguishing vehicular light source from non-vehicular light sources,” is a purely functional recitation in that there is no structure presented in the claim element itself for distinguishing between vehicular and non-vehicular light sources, and a reading of the claim does not require the import of structure from the Specification into the claim under 35 U.S.C. § 112, sixth paragraph. One of ordinary skill in the art reading this claim could use a number of different structures and devices as the image sensor to accomplish the function of distinguishing between vehicular and non vehicular light sources, including but not limited to: comparing the detected light to a library of known spectrums and light intensities emitted by vehicular and non-vehicular light sources, OR distinguishing whether or not a light source is vehicular in nature using a heuristic approach.

Claims 27, 32-38 and 41-46 are rejected by virtue of their dependence on claim 26.

***Conclusion***

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JESSICA L. ELEY whose telephone number is (571)272-9793. The examiner can normally be reached on Monday - Thursday 8:00-6:30 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Porta can be reached on (571) 272-2444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David P. Porta/  
Supervisory Patent Examiner, Art Unit  
2884

/J. L. E./  
Examiner, Art Unit 2884